

ORAL ARGUMENT HELD ON MAY 6, 2024

In The
United States Court of Appeals
For The District of Columbia Circuit

KATHERINE DANIELA PACHECO QUIROS, ET AL.,

Plaintiff - Appellant

v.

MOLLY AMADOR, DEPUTY CONSUL GENERAL AND VISA UNIT
CHIEF U.S. EMBASSY IN COSTA RICA, ET AL.,

Defendant - Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**APPELLANT'S MOTION TO PARTIALLY
STRIKE GOVERNMENT'S 28(j) LETTER**

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Counsel for Appellant

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES
AND DISCLOSURE STATEMENT**

A. Parties: Plaintiff-Appellant Gulshan Karimova is a citizen, national and resident of Azerbaijan.

B. Rulings under Review: The ruling under review is the Order of the U.S. District Court for the District of Columbia dismissing on the merits Count I of the Appellant's Amended Complaint against Kathryn Abate, the Consul at the U.S. Embassy in Georgia. The Order was issued by Judge Colleen Kollar-Kotelly. The memorandum opinion accompanying this order is available at 2023 U.S. Dist. LEXIS 115422, 2023 WL 4364161.

C. Related Cases: This case has not previously been before this Court or any other court. Undersigned counsel is not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

This Court ordered the government to file a 28(j) letter on the public record of administrative processing. Unfortunately, aside from a single paragraph in the webpage referred to in the first footnote, the letter filed by the government is entirely unresponsive to that Order and so should be stricken.

None of the authorities referred to in the government's letter even include the phrase "administrative processing", except 9 FAM 306.2-2, which merely refers to actions a consular officer make take after the completion of administrative processing, but states nothing about what such administrative processing actually is. Further, the following statements in this letter have no basis in the public record at all, but merely reflect opposing counsel's opinion:

“Administrative processing” is a catch-all term that refers to various discretionary, post- adjudication processes undertaken by the State Department (“State”) ...

...

The website’s reference to “when administrative processing is required” reflects internal procedures on the initiation of processing if an officer determines that an applicant has not met their burden to establish eligibility for a visa and that information from sources other than the applicant may help either establish the applicant’s eligibility or affirm their ineligibility. These procedures depend on the nature of the ineligibility. Many appear in the FAM, non-binding guidance for State personnel. 9 FAM 101.1-1. While some procedures are public, others are not.

A court may strike so much of a Rule 28(j) letter as exceeds the scope of Federal Rule of Appellate Procedure 28(j). *Clermont v. United States AG*, 779 Fed. Appx. 701, 703 nt.4 (11th Cir. 2019). So, by the same token, where the 28(j) letter is being filed in response to this Court’s Order, it may strike so much of that letter that exceeds the scope of said Order.

Accordingly, the 28(j) letter should be stricken as nonresponsive to this Court’s Order, with the sole exception of footnote 1.

Respectfully Submitted:

/s/ Michael E. Piston

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing motion complies with the word limit of Fed. R. App. P. 27(d)(2) in that the body of the motion is 313 words in length.

CERTIFICATE OF SERVICE

I certify that on May 12, 2024, I filed the foregoing with the District of Columbia Circuit Court of Appeals by using the Court's CM/ECF system. I further certify that all party participants are members of the CM/ECF system and that the system will accomplish service of process.

/s/ Michael E. Piston

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